Supreme Court, U.S.
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No. 00-701

IN THE

Supreme Court of the United States

CITY OF SIMI VALLEY,

Petitioner,

v.

PHILIP YOUNG,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF

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ARGUMENT

Respondent Philip Young's standing analysis on Question 1 confirms that the Court of Appeals for the Ninth Circuit has radically expanded the First Amendment "overbreadth" exception to traditional standing requirements. Citing his trial testimony, Young argues that given the so-called "sensitive use veto" he would never reapply for a special use permit to operate an adult business. He concludes that "[t]his presents a classic case of an individual who was deterred from exercising his First Amendment rights in a 'real and substantial' way." Response at 5.

Young thus speaks exclusively of vindicating his own constitutional rights. Although his analysis may establish standing to bring an as applied challenge (*see Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 796 (1984)), it certainly does not permit a facial challenge, which "is predicated on 'a judicial prediction or assumption that the statue's very existence may cause *others not before the court* to refrain from constitutionally protected speech or expression.' " *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973) (emphasis added). In this respect, Young's analysis is irrelevant to this Court's review of the Ninth Circuit's opinion. The Ninth Circuit specifically did not premise Young's standing on his own rights, but rather held that his standing depended on the invocation of the overbreadth doctrine. Nothing in the Response disputes that, in permitting Young's facial challenge to petitioner City of Simi Valley's adult business ordinance, the Ninth Circuit broadened traditional standing rules to include cases where a time, place, and manner restriction allegedly infringes on the speech of parties not before the court. This Court must rectify the Ninth Circuit's unwarranted expansion of well established standing rules.

Young fails to dispute that Question 2 presents an issue worthy of this Court's consideration, responding instead with what is in effect an improper cross-petition for a writ of certiorari. Whether a municipality must favor adult uses over other land uses such as schools and churches is an important issue that should be decided by this Court.

With respect to Question 3, Young incorrectly argues that this case is not affected by *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S. Ct. 1382 (2000). Young explains that since the City of Simi Valley's ordinance covers adult entertainment other than totally nude dancing, "nude dancing is irrelevant to this adult zoning case." Response at 2. Yet Young also states that if he opens an adult business it would include nude dancing. *Id.* This case thus spotlights the tension between the *Erie* case and *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), an issue which this Court should address.

CONCLUSION

For the foregoing reasons, the City of Simi Valley respectfully requests that the petition for a writ of certiorari be granted.

Respectfully submitted,

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